IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Crl.L.P..No. 617 of 2006()

CC.559/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT -II, KASARAGOD

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PETITIONER/COMPLAINANT

M.KRISHNAN NAMBIAR, S/O.P.KUNJAMBU NAIR,
PILATTY HOUSE, PERLADUKKAM, KOLATHUR VILLAGE,
KOLATHUR P.O., KASARAGOD TALUK, -DO- DISTRICT.

BY ADV. SRI.C.K.SAJEEV

RESPONDENTS: ACCUSED & STATE

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1. ISWARA R. AIL, S/O. RAMA BELCHAPPADA,
ARADHANA, OPPOSITE UPPALA BUS STAND,
UPPALA P.O., UPPALA VILLAGE, KASARAGOD TALUK,
DO-DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN - R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 24/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 617 OF 2006

Dated this the 24th day of November, 2006

O R D E R

The petitioner is the complainant in C.C.No.559 of 2005 on the file of the Judicial First Class Magistrate's Court II, Kasaragod. The above case was taken on file on the basis of a complaint filed by the petitioner alleging that Ext.P1 cheque for an amount of Rs.70,000/- issued to him by the first respondent in discharge of a liability when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. After completing the legal formalities, the petitioner filed the complaint.

2. To prove the case against the first respondent, the appellant himself was examined as PW.1 and Exts.P1 to P5 were produced. Though no oral or documentary evidence was adduced on the side of the defence, the first respondent when questioned under Section 313 Cr.P.C. stated that he had issued a cheque in favour of one Premalatha towards discharge of a debt and that the said Premalatha had filed a civil suit to get the amount covered by the cheque. He further stated that subsequently the matter was settled, but the cheque was not returned to him and that the said cheque

was misused by the petitioner.

3. After considering the entire evidence, the trial court found that the petitioner failed to prove that Ext.P1 cheque was issued in his favour by the first respondent in discharge of a legally enforceable debt. The trial court also found that even though as per the complaint the cheque issued was for an amount of Rs.70,000/-, the petitioner when examined in court stated that the first respondent had borrowed only a sum of Rs.50,000/- and Rs.20,000/- was by way of interest. This difference in the amount was also taken as a ground to reject the case of the petitioner. The trial court also relied on the decision of this Court reported in **Kamalammal v. Mohanan, 2006(3)K.L.T. 972** and found that the petitioner failed to prove that the presumption available under Section 139 of the Negotiable Instruments Act, 1881 is applicable to him. Considering the entire facts and circumstances of the case, this Court is of the view that the impugned judgment requires no interference.

Accordingly, leave to appeal is rejected.

(K.THANKAPPAN, JUDGE)

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